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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

23-CR-563-LAK

5 ROBERT BIRCH,

6 Defendant.

Conference

7 -----x

8 New York, N.Y.  
9 February 1, 2024  
11:00 a.m.

Before:

10 HON. LEWIS A. KAPLAN,

11 District Judge

12 APPEARANCES

13 DAMIAN WILLIAMS

14 United States Attorney for the  
15 Southern District of New York

JAMIE BAGLIEBTER

16 Assistant United States Attorney

17 LAW OFFICES OF JEFFREY LICHTMAN

Attorneys for Defendant

18 BY: JEFFREY HARRIS LICHTMAN

19  
20 ALSO PRESENT: JONATHAN C. LETTIERI, Pretrial

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(Case called)

MS. BAGLIEBTER: Good morning, your Honor. Jamie Bagliebter from the government, and with me at counsel table is Pretrial Services Officer Jonathan Lettieri.

THE COURT: Good morning.

MR. LICHTMAN: Jeffrey Lichtman and Jeffrey Einhorn for Robert Birch.

THE COURT: Good morning. I wanted to get a little more understanding of what is going on with the discovery and how it affects this. So I don't want to see the timetable slide, so maybe you can enlighten me, folks.

MS. BAGLIEBTER: Your Honor, I'm happy to begin. Your Honor, as the defense noted in their letter to the Court, the substantial majority of the discovery in this case was produced in December of last year. That involves most of the records in this case, phone records, social media records, Google, iCloud records, and I think, most importantly, the government produced to the defense on December 11, a 4,000-page communication between the minor victim and the defendant, which tracks in many ways the images and videos that underlie the charges in the complaint -- I mean, in the indictment. Excuse me.

And we've had discussions with the defense about where the government -- where within the large volume of the discovery the government views some of the most pertinent evidence to help aid them in their efforts. So at this --

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1 THE COURT: You know, I'm a little floored when you  
2 say 4,000 -- did you say word or page?

3 MS. BAGLIEBTER: Page.

4 THE COURT: Page?

5 MS. BAGLIEBTER: Correct.

6 THE COURT: What is this, the Encyclopedia Britannica?

7 MS. BAGLIEBTER: Your Honor, this was a chat  
8 communication between the victim and the defendant.

9 THE COURT: I'm sorry, what kind?

10 MS. BAGLIEBTER: Chat communications.

11 THE COURT: Oh, chat communication.

12 MS. BAGLIEBTER: Yes, text message communications that  
13 they had over time. The indictment in the case centers on  
14 incidents that took place on three dates, even though those  
15 three dates are not nearly isolated incidents, but the  
16 communications that pertain to those dates and the images and  
17 videos that correspond to those dates run hundreds and hundreds  
18 of pages.

19 THE COURT: Didn't they eat or sleep?

20 MS. BAGLIEBTER: No, your Honor.

21 THE COURT: I'm not really making light of it. I  
22 mean, it's --

23 MS. BAGLIEBTER: Nor am I. I think over this time  
24 period the abuse that was taking place on, these incidents did  
25 last hours and hours and did involve the deprivation of sleep,

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1 and it took place while these communications were happening.  
2 So we produced that first to the defense and talked to them  
3 about where we found the pertinent communications, and that's  
4 because the government and the defense have talked about, sort  
5 of, next steps in this case and directing them to the  
6 information that is most pertinent seems to be an efficient way  
7 for them to assist in providing them the materials that they  
8 need to. There are a few items outstanding from the  
9 government's perspective, but we have discussed them with the  
10 defense, and they're familiar with them; namely, there are some  
11 records from the school that are replete with public -- with  
12 PII relating to a number of minors. And so, we're going to  
13 produce those. We've agreed with the defense to produce those  
14 attorneys' eyes only, so that we can get out very shortly.

15 And then, with respect to the devices that contain  
16 child sexual abuse material, as the Court is aware, those need  
17 to be reviewed at the FBI to be consistent with 18 U.S.C.  
18 3509(m). So we have discussed that with the defense, and it's  
19 available for their review at any time. We've also endeavored  
20 to segregate as best as we can some amount of those devices  
21 that does not include child abuse sexual material. It's not  
22 just images. It also requires that we are break any links,  
23 hyperlinks, to staff that would access child sexual abuse  
24 material. So we've endeavored to do that, and I think we can  
25 produce some partial extractions of those devices safely, and

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1 we expect to do that very quickly. And that will just aid the  
2 defense by requiring them to spend less time in the government  
3 offices reviewing those devices.

4 THE COURT: So give me a forecast end date.

5 MS. BAGLIEBTER: So, your Honor, I think within a week  
6 or two, those items can be produced. And I'm not aware at this  
7 time of any other materials that they would need, any other  
8 discoverable materials. And then, of course, the child sexual  
9 abuse material, which is really the heart of this case, is and  
10 has been available to them since our last conference.

11 THE COURT: All right. Mr. Lichtman, please?

12 MR. LICHTMAN: Judge, all of that is accurate. You  
13 know, you are coming at this not from the place of amount of  
14 knowledge that the two parties have because we've been knee  
15 deep in this case for months.

16 THE COURT: Yes, but you are wandering away from the  
17 microphone, so I'm not hearing too well.

18 MR. LICHTMAN: I'm sorry. I apologize. It should be  
19 understood from the beginning, this is a case that is straight  
20 mitigation. This should be on a path for anything but  
21 mitigation to resolve it that way. It's a highly unusual case  
22 because of the age of the defendant, who turned 18 just a few  
23 months ago, and a lot of relationship occurred before he was  
24 18. In addition, there is such a long and winding road of  
25 psychological issues that go back to not just junior high

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1 school but back to almost from when he could walk.

2 So we've got a number of doctors. We have four  
3 doctors that are involved trying to unravel this, because we  
4 need to put forth a mitigation package because the conduct --  
5 you've seen it in the indictment -- is so extreme that we need  
6 to explain it and try to make sense of it, and also, a path  
7 going forward with the defendant.

8 THE COURT: Well, when you say "mitigation package,"  
9 with what end in view? I'm not sure what you mean by that  
10 exactly.

11 MR. LICHTMAN: Well, we're in a case right now, Judge,  
12 with a 45-year mandatory minimum.

13 THE COURT: Right.

14 MR. LICHTMAN: So we're going to be, at the  
15 government's invitation, understanding the Draconian  
16 punishments with the charges that were filed, they asked us to  
17 put together a package for them so that we can try to resolve  
18 this case together to some large extent. Obviously, we can't  
19 do your job as well, Judge, but in terms of where this case  
20 will be going.

21 THE COURT: A negotiated resolution is what we're  
22 talking about?

23 MR. LICHTMAN: Yes. And there's just so much  
24 involved. We have the number of doctors that we have. We have  
25 not gone through the pictures, the images. When I tell you

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1 that we're working on this case not just every day, but a good  
2 part of the day with a number of lawyers, because there's so  
3 much involved. So what I respectfully -- what I don't want to  
4 have happen, but I'm willing to if your Honor wants it, is I  
5 would like to avoid setting a motion schedule because it's  
6 really just superfluous and a waste of time for both parties,  
7 because it's never -- first of all, there's no motions that are  
8 so significant because we've consented to nearly every search  
9 from when the investigation part began. There was an initial  
10 search. We were hired. Every other purported search that was  
11 going to be, we consented to, including at the defendant's  
12 college. All of that stuff was consented to. So there's not  
13 really any kind of significant motion schedule because we're  
14 not -- we're on the same page. We're working on this together.

15 So what I'm trying to do is use this time to get all  
16 these doctors quickly to get the work done. And as I said, we  
17 speak to the doctors not just one time a day, multiple times a  
18 day. We're getting through it. We have to bring, perhaps,  
19 some of the doctors to look at some of the images with us. We  
20 have to go through it, but it's not just to go through it just  
21 to see what the evidence is against the defendant. But we have  
22 to try to understand how it fits in with the work that they are  
23 doing.

24 So I know the case. It's unusual in that sense, and  
25 Judge, you know, we've all had -- every case that we've had

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1 usually is you've got charges. You've got evidence. You make  
2 motions, and you either go to trial or you plead. This case is  
3 different in a way because we're really working together on  
4 this.

5 THE COURT: Okay. I appreciate the update. I'm going  
6 to give you what you asked for. Andy, let's set another date  
7 in about two months.

8 THE DEPUTY CLERK: Sure, Judge. Judge, would Tuesday  
9 April 9 at 11:00 a.m. be good.

10 THE COURT: Work for everybody?

11 MR. LICHTMAN: I think that will be fine.

12 MS. BAGLIEBTER: Yes, your Honor.

13 MR. LICHTMAN: Thank you, Judge.

14 THE COURT: Okay. Does the government have a request  
15 for an extension of the Speedy Trial Act?

16 MS. BAGLIEBTER: Yes, your Honor. The government  
17 moves the Court to exclude time between now and April 9, so  
18 that the parties can continue their discussions about a  
19 potential pretrial disposition and so the defense can review  
20 the discovery and consider whether any motions should be made.

21 THE COURT: Is there any objection, Mr. Litchtman?

22 MR. LICHTMAN: No, your Honor.

23 THE COURT: Time is excluded from now to and including  
24 April 9. I find that the interests of justice served thereby  
25 outweigh the interest of the public and the defendant in a



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1 speedy trial for the reasons stated by the government and the  
2 defense for that matter.

3 Okay. Thank you. I appreciate you coming down. I  
4 just wanted to keep on top of it.

5 MR. LICHTMAN: Thank you, your Honor.

6 MS. BAGLIEBTER: Thank you, your Honor.

7 THE DEFENDANT: Thank you, your Honor.

8 (Adjourned)  
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